

Evan Cohen, CFA
Principal

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Mr. Evan Cohen specializes in financial modeling and valuation, with a focus on complex business litigation. He has experience supporting highly-regarded expert witnesses, including a Nobel Laureate, and assisting attorneys for the U.S. Department of Justice, the Internal Revenue Service, and corporations on all phases of case management and strategy.

Mr. Cohen has worked on a variety of finance and tax litigation matters, including cases involving Long-Term Capital Management, GlaxoSmithKline, Altria, BB&T, Fifth Third, Historic Boardwalk Hall, Pritired, Bank of New York, Buyuk, and Salem. He is currently expanding his practice into bankruptcy matters and nutritional economics.

Prior to joining The Brattle Group, Mr. Cohen worked for six years as a consultant at Cambridge Finance Partners, where he focused on litigation involving tax shelters, leasing transactions, transfer pricing, and valuation matters. He has also worked as an investment banking analyst in corporate finance at Dillon, Read, and UBS.

EDUCATION

Mr. Cohen received his MBA from the MIT Sloan School of Management, with a focus on financial engineering. He received his B.A. in Economics *magna cum laude* from Cornell University, where he wrote his senior honors thesis: "The Effects of Price Elasticity on Prohibitions," published by *The Michigan Journal of Economics* in 1997. Mr. Cohen completed his CFA in 2013, and is a member of the CFA Institute and Boston Securities Analyst Society.

AREAS OF EXPERTISE

- Structured Finance and Valuation
- Forensic Analysis
- Applied Econometrics
- Damages
- Tax Disputes
- Deposition and Trial Consulting

EXPERIENCE

Structured Finance and Valuation

- For a private client, provided affidavit analyzing value of company's bonds and other internal, intracompany indebtedness. Analyzed market rates, comparable indebtedness, and modeled cash flows from specific tranches of debt.
- For the U.S. Department of Justice (DOJ) and U.S. Attorney's Office, analyzed transaction documents for Lease-in Lease-out (LILO) transactions involving three different taxpayers, encompassing eight separate transactions involving multiple cross-border leases for power plants and public infrastructure. Analyzed complex contracts involving thousands of pages and converted contract terms into cash flow models for various contractual scenarios. Conducted sensitivity analyses to test model robustness and stress points.
- For a private client, supported an outside expert in the development of an opinion on the creditworthiness of several corporate subsidiaries, providing analysis and opinion as to the implied credit rating of each as independent entities.
- For an investment division of a major insurance company, developed analytical support for negotiation strategy in a tax matter involving foreign currency options. This involved converting transaction documents into cash flow models, and presenting results on multiple occasions to the legal team and the practitioners who entered into the transaction.
- For a private creditor in a bankruptcy, provided economic scenario analysis and advice on various settlement offers. Advised client to reject \$840 million payout to other creditors, eventually saving them \$25 million in the final negotiation.
- Built real options models for the drug development process for 19 distinct drugs in various stages of clinical progress in support of expert testimony on the relative economic value of marketing, development, and patented technology. The end result was to model the profit split on the potential returns of these drugs between small biotech firms and the large pharmaceutical firms with whom they entered into business alliances. This involved separate research projects for analyzing the terms of the development contracts between biotech and big pharma firms, and for the assumptions on revenues, manufacturing costs, clinical trial expenses, phase times and transitional probability success, cost of capital, and itemized income statement expenses. Performed extensive sensitivity testing on all assumptions.

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- For the DOJ, built integrated financial models for nine underlying transactions involved in complex cross-border lease-stripping tax shelter dispute. This involved review of case records and analysis of all pertinent transaction documents. Modeled underlying cash flows from the leasing of thousands of different types of computer equipment including mainframes and telecommunication systems.
- For a private client, led a team providing the valuation of various subsidiaries of a Fortune 500 company. Created financial statements for each legal entity, and performed discounted cash flow and comparable company valuation analyses.
- For the DOJ and IRS, analyzed transactions involving the Structured Trust Advantaged Repackaged Securities transactions (STARS). Transactions involved the creation of a foreign trust where the U.S. taxpayer would direct income accruing from billions of dollars of U.S.-based assets, thereby subjecting the income to taxes in a foreign jurisdiction rather than the United States. STARS The U.S. taxpayer would also receive what it claimed was below-market funding from a U.K. bank. The dispute was over foreign tax credits that were alleged to have been created by subjecting the income to U.K. taxes.
- For a private client, created thirty years' worth of earnings and expenditure cash flows in support of testimony on the creation of earning capacity and analysis of enhanced earning claim.

Forensic Analysis

- For the DOJ, evaluated the purported hedging techniques used for a stock lending program in an apparent Ponzi scheme. Reviewed tens of thousands of pages of client files to track cash flows, and reviewed hundreds of account statements to track investments. Through our work, attorneys were able to demonstrate to two separate federal courts that the underlying transactions were in fact Ponzi schemes.
- For the DOJ and IRS, reviewed wire transfers to track cash flows and alleged circularities of returns on investments. Analyzed transactional documents to find discrepancies between contracted and actual cash flows.

Applied Econometrics

- For the DOJ, worked with an expert economist specializing in environmental and natural resource economics in analyzing 12,000 Powder River Basin coal contracts from 1978 through 1993 for price drops likely caused by contract renegotiation. Developed regression

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models, including log and linear fixed effect models, to determine the statistical likelihood of renegotiation of the coal contract at issue. The project involved massive data collection and cleansing effort, and formulation and write-up of statistical methodology.

- For the IRS, developed and performed regression analyses on the sources of value for young biotech firms. Data collection involved several sources which needed to be merged and cleansed using statistical and spreadsheet tools. This involved the merging of dates of strategic alliances, patent filings, and clinical trial milestones between financing rounds. Also developed and ran thirty statistical regression models to test for the sources of value created between financings and performed fixed effects regressions and selected dummy variable controls to test for robustness of conclusions.
- For the DOJ, undertook data collection and cleansing on a leasing database in order to perform regression analysis to derive lease yields, discount rates, and depreciation rates on computer equipment.

Damages

- For an investment bank involved in class action securities litigation related to Enron, prepared damages estimate based on stock price analysis utilizing contemporaneous equity analyst reports.
- For a private client, evaluated malpractice damages in celebrity divorce representation. This included modeling of eschewed settlement offers and effects of potential legal advice errors using several different damage theories.
- Analyzed the pricing and market response to a client's bonds, including general obligation bonds, those secured by credit card receivables, and those involving a provision that allowed the client to call the bonds in the event of a large decline in receivables. Helped to formulate methodology for estimating damages from the analysis.

Tax Disputes

- For a taxpayer in the manufacturing sector involved in a transfer pricing dispute with the IRS, leading a case team of over a dozen Brattle personnel in supporting eight expert witnesses analyzing the cancellation of an Advanced Pricing Agreement with the IRS and assessing the proper transfer pricing methodology by examining the sources of value along the company's supply chain.

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- Supported the DOJ and one of their experts, Dr. Michael Cragg, in the Buyuk transaction. Led a case team that provided analytical and documentary support for the expert's analysis of economic substance and incentives of the parties. In ruling for our client, the U.S. Tax Court judge relied heavily on the testimony of Dr. Cragg.
- For the IRS in an appeals hearing, supported four experts, including a Nobel Laureate and a Stanford Business School professor, in the preparation of two reports regarding a hedge's funds claim of long-term capital gains through options underwritten by two investment banks on billions of dollars in earnings. Examined the risks taken on by the investment banks or retained by the hedge fund, and critiqued the analysis of the hedge fund's experts in assessing the probability of a loss event and the magnitude of potential losses if such an event were to occur.
- For the DOJ, provided analytical and project team management support for the preparation of expert opining on the effectiveness of the hedging program and the implications of improper hedging techniques, including the determination of sale versus loan and its impact on tax reporting of various parties. Also supported documentary and case team management for the expert opining on the standards of care of accountants on such complex transactions.
- For the IRS, provided analytical evaluation of economic substance of a partnership designed to transfer historic tax credits in the case against Historic Boardwalk Hall. Led team reviewing underlying documents and developing cash flow model necessary for the evaluation of risk transfer and economic substance. Aided in preparation of report and ancillary materials, as well as trial strategy and preparation of expert testimony.
- For the DOJ on three cases involving LILO transactions, encountered the underlying legal issues of economic substance, substance over form and pre-tax business purpose. Provided expert support, including document review, cash flow creation and scenario testing, as well consulting on strategy and case preparation. Examined option exercise scenarios and their sensitivity to various parameters, including interest rates and the value of the underlying assets, as well as potential default scenarios.
- For a taxpayer involved in litigation over leasing transactions, examined analysis of government expert on conclusions concerning cash flows, ownership and discount rates for different phases of long-term leveraged leases.

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- For the DOJ on a dispute involving the tax consequences of a contingent liability, examined underlying contracts and produced econometric models to measure the likelihood of the various contract contingencies arising.
- For the IRS in a tax dispute involving transfer pricing, evaluated the valuation of intangible assets and its impact on the pricing of inter-company transactions.
- For the DOJ and IRS in cases involving the STARS transactions, analyzed the economic substance of the transaction from the perspective of the U.S. taxpayers. Has resulted in favorable outcomes for our clients in the Bank of New York and Salem cases.
- Consulted for the investment division of a major insurance company involved in a tax matter over foreign currency options. Examined underlying documents to develop a cash model which provided insight in the sources of pre-tax returns to meet economic substance and form over substance standards. Documented and presented the results to the client and legal team and consulted over negotiation and settlement strategy.
- For the DOJ in the Pritired case, analyzed the economic substance of international structured finance transaction involving investment by Principal Life Insurance and Citibank. This resulted in a favorable ruling for our client.
- For the DOJ on a case involving a basis pump fueled by cross-border leasing transactions, looked at issues involving the step transaction doctrine, economic substance, substance over form, and pre-tax business purpose.

Deposition and Trial Consulting

- **Robert J. Nagy v. United States of America** – Attended two week trial in South Carolina, helping three DOJ attorneys prevail against the accountant for a tax scheme involving appreciated stock. Helped the government through all phases of trial preparation, including opening statements, examination preparation, expert witnesses, trial strategy and demonstratives and closing statements. Testified as a summary witness on behalf of the government, providing testimony to the court on the extent of the transactions, as well as the fees charged by Mr. Nagy.
- **Bank of New York Mellon Corp. v. Commission of Internal Revenue** – Attended parts of three week trial in Tax Court in New York, helping the attorneys for the IRS in the examination of expert witnesses on finance and economic issues. Provided real-time aid in

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the preparation of lines of testimony, and aided in the creation of trial demonstratives supporting IRS experts. The Tax Court ruled in favor of the government.

- **Altria Corp v. United States of America** –Attended three week trial in New York City, helping attorneys from the United States Attorneys Office in New York and DOJ prepare strategy and witnesses and understand the economics of the underlying transactions. Reviewed underlying transaction documents and expert reports in real time to aid in the preparation of lines of questioning for government and opposing experts as well fact witnesses. After a thirty minute deliberation, the jury decided in favor of the government on all counts for all transactions.
- **Fifth Third Bancorp v. United States of America** – Attended three week trial in Cincinnati, helping five DOJ and IRS attorneys, four of whom had been on the case less than three months, understand underlying transactions and the implications of case documents and facts to develop examinations for each witness. Conducted continual preparation of expert witnesses during the trial. Also attended several depositions, including that of a key witness for the opposing party, Prof. Roman Weil, in order to give real-time advice to deposing attorney. After a short deliberation, the jury decided in favor of the government.
- **Long Term Capital Partners v. United States of America** – Attended five week trial in Connecticut, helping attorneys for the DOJ with trial strategy and expert witnesses with preparation for testifying. The judge ruled in favor of the United States.

TESTIMONY

- Robert J. Nagy v. United States of America, for the United States, July 2010, United States District Court for the District of South Carolina
- For a private client, submitted an affidavit on valuation of corporate bonds and certain intracompany indebtedness

PUBLICATIONS AND PRESENTATIONS

- Panelist, ABA 2014 Joint Fall CLE Meeting, “Experts in the Trenches: Risk, Fair Rewards, Economic Substance, and Shams,” Denver, Colorado, September 19, 2014.
- With Yvette Austin Smith, “Asset Value Trumps Discounted Cash Flow in Another Bankruptcy Valuation Dispute,” *Brattle Client Alert*, July 29, 2014.

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- With Michael Cragg, Jehan deFonseka, Melanie Rosenberg and Bin Zhou, “Are You What You Eat? The Unintended Consequences of Adherence to US Government Dietary Advice,” awaiting publication, 2014.
- Bankruptcy definition for the Wiley Encyclopedia of Management, 3rd Edition, 2013.
- With Richard McGowan, “Grass is Always Greener When It’s Legal: Policies for State Regulated Marijuana,” *The Economists’ Voice*, Vol. 9, Issue 1, October 2012.
- “Tax Policies for Legalized Marijuana in California,” SSRN abstract 1626985, August 2010.
- With Metin Celebi, Michael Cragg, David Hutchings, and Minal Shankar, “Can the U.S. Congressional Ethanol Mandate be Met?,” *Brattle Discussion Paper*, May 2010.
- With Michael Cragg and Metin Celebi, “The 2007 Energy Independence and Security Act: Can and will the mandate be met?” December, 2009.
- With Metin Celebi, “Regulatory Mechanisms to Reduce Greenhouse Gas Emissions,” included as appendix to currently pending ASTM standard on risk-based management of greenhouse gases, July, 2009.
- Tutorial for energy project modeling, presented to MIT graduate class 15.449, Special Seminar in Financing Energy Projects, presented April 28, 2009.
- Panelist, “Alternative Energy Incentives and Credits,” American Petroleum Institute Federal Tax Forum, Houston Texas, April 21, 2009.